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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JOJO DEOGRACIAS EJONGA,

12 Plaintiff,

13 v.

14 CHERYL STRANGE, *et al.*,

15 Defendants.

CASE NO. 2:21-cv-01004-RJB-JRC
ORDER RENOTING MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION AND DIRECTING
RESPONSE

16 The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States
17 Magistrate Judge J. Richard Creatura. This matter is before the Court on plaintiff's amended
18 motion for a temporary restraining order ("TRO") and preliminary injunction. Dkt. 8.

19 Plaintiff is incarcerated and proceeds *pro se*, and the Court has granted his request to
20 proceed *in forma pauperis* and directed service of his complaint. Dkts. 6, 10. Plaintiff's
21 complaint alleges that his constitutional rights will be violated by conditions that will result from
22 double-bunking cells at the Washington State Reformatory. *See generally* Dkt. 7.

23 Plaintiff's amended motion for a TRO and preliminary injunction contends that
24 administrators at the Washington State Reformatory are planning to consolidate units by moving

1 prisoners from single-occupant to double-occupant cells. *See* Dkt. 8, at 2. Plaintiff seeks
 2 immediate injunctive relief on the basis that these actions will result in overcrowding conditions
 3 that violate his Eighth Amendment rights. *See* Dkt. 8, at 7. At the time he filed his motion, he
 4 had not yet been moved and includes no indication of when he expects to be moved. Although
 5 his motion characterizes the planned consolidation as “tentative,” he also states that other
 6 prisoners are already being moved into double occupant units and that ladders have been drilled
 7 into certain cell walls, signifying an intent to double bunk those cells. *See* Dkt. 8, at 3, 8.

8 Plaintiff also acknowledges that he has not notified defendants of his motion for a TRO
 9 and preliminary injunction. Dkt. 8, at 5.

10 Federal Rule of Civil Procedure 65(a)(1) prohibits the Court from issuing a preliminary
 11 injunction until notice has been given to the opposing party. Regarding TROs, Rule 65(b)(1)
 12 disallows issuance of a TRO without notice to the opposing party unless—

13 (A) specific facts in an affidavit or a verified complaint clearly show that
 14 immediate and irreparable injury, loss, or damage will result to the movant before
 15 the adverse party can be heard in opposition; and

16 (B) the [movant] certifies in writing any efforts made to give notice and the
 17 reasons why it should not be required.

18 Here, plaintiff acknowledges that he has made no effort to give notice, citing his
 19 incarceration. The Court is not persuaded that the fact of incarceration, alone, can justify
 20 entering an *ex parte* TRO. *See, e.g., Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126,
 21 1131 (9th Cir. 2006) (quoting *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322 (9th Cir. 1984))
 22 (explaining that an *ex parte* TRO “may be appropriate ‘where notice to the adverse party is
 23 impossible either because the identity of the adverse party is unknown or because a known party
 24 cannot be located in time for a hearing.’”). Thus, the Court would not issue the TRO requested
 by plaintiff without first providing notice to defendants.

1 Nor does plaintiff's affidavit or complaint clearly show that immediate and irreparable
2 injury, loss, or damage will occur before defendants can be heard in opposition. It is somewhat
3 unclear whether the consolidation of prisoners is ongoing or tentative from plaintiff's materials.
4 Compare Dkt. 8, at 3 (describing the plan to consolidate units as "tentative") with Dkt. 8, at 5
5 (claiming that many prisoners have already been moved into double occupancy cells). Plaintiff
6 himself had not been moved at the time he filed his motion, and he cannot bring claims of
7 overcrowding on the basis of other prisoners being transferred. See *Halet v. Wend Inv. Co.*, 672
8 F.2d 1305, 1308 (9th Cir.1982) (stating that a party must assert his own rights, not those of third
9 parties). Plaintiff does not provide a clear basis from which the Court can determine when or if
10 he will be moved. Therefore, he has not met his burden to show that immediate injury will occur
11 before defendants can be heard in opposition, although he has raised sufficient concerns that he
12 will be moved to a double occupancy cell and about a resulting risk to his health to justify
13 requiring a response to the motion for a TRO/preliminary injunction.

14 Accordingly, the Court will direct a response to the motion for a TRO/preliminary
15 injunction before making a recommendation on plaintiff's motion.

16 Defendants shall respond to plaintiff's motion (Dkt. 8) on or before September 3, 2021.
17 Plaintiff may file a reply to their response on or before September 10, 2021. The motion for
18 TRO is renoted for consideration on September 10, 2021. The Clerk's Office shall send a
19 courtesy copy of this Order to the Office of the Attorney General.

Dated this 19th day of August, 2021.


J. Richard Creatura
Chief United States Magistrate Judge